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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SECOND APPELLATE DISTRICT

DIVISION SIX

THE PEOPLE,

Plaintiff and Respondent,

v.

WILSON CLAUDE CHOUEST,
JR.,

Defendant and Appellant.

2d Crim. No. B291449
(Super. Ct. No. 2014030724)
(Ventura County)

Wilson Claude Chouest, Jr., appeals from the judgment after a jury convicted him of two counts of first degree murder (Pen. Code,¹ §§ 187, subd. (a), 189, subd. (a)), and found true allegations that he used a deadly weapon to commit his crimes (§ 12022, subd. (b)(1)). The jury also made special circumstance findings that Chouest committed multiple murders and murdered during the commission of rape (§ 190.2, subds.

¹ All further unlabeled statutory references are to the Penal Code.

(a)(3) & (a)(17)(C)). Chouest admitted an allegation that he served a prior prison term (§ 667.5, subd. (b)). The trial court sentenced him to two consecutive terms of life in prison without the possibility of parole plus four years.

Chouest contends: (1) the trial court's admission of evidence of his prior sexual offenses violated the prohibition against ex post facto laws, (2) the court erroneously instructed the jury that it could consider offenses not listed in Evidence Code section 1108 to help determine whether he had the propensity to commit rape, and (3) the court's use of CALCRIM No. 1191A lowered the prosecution's burden of proof. We affirm.

FACTUAL AND PROCEDURAL HISTORY

In the summer of 1980, Chouest lived with C.B. and her three sons in Lemoore. From July 14 to 20, C.B. left her sons in Chouest's care. Chouest left the boys alone for one or two nights. When he returned, the carpet in the back seat of his car was soaked with blood.

Chouest made the boys vacuum his car. He told one of them that he had "picked up a broad from a bar and killed her and dropped her body off in Bakersfield." He also told him to soak a knife in bleach. Separately, Chouest told another of C.B.'s sons that he hit a deer and put it in the back seat of his car. One of C.B.'s sons later told his mother not to use the vacuum because they used it to vacuum blood from the car.

On July 15, a woman's body was discovered in an almond orchard near Delano. A large amount of blood was on the ground. A set of tire tracks leading to the highway were a few feet away. There were no drag marks on the ground, indicating that the woman could have been killed at a different location.

The woman had no identification, and was designated “Jane Doe—Kern County.”

Dr. Silvia Comparini conducted an autopsy. Jane Doe—Kern County had 27 stab wounds on her body. Her aorta, lung, liver, gallbladder, stomach, and pancreas had been penetrated. About one-third of the blood had drained from her body. She had injuries on her mouth and face consistent with blunt force trauma, and defensive wounds on her hands and arms. Dr. Comparini ruled the death a homicide.

Jane Doe—Kern County had no visible injuries on her vagina, but there was a pool of semen and sperm inside. There was also seminal fluid on her panties and girdle and inside her rectum. Dr. Comparini opined that she was raped just before she was stabbed.

On July 18, a woman’s body was discovered in the Westlake High School parking lot. Her breasts were exposed, and her blood-stained pants were pulled down. She had multiple stab wounds. There was redness around her neck and bruises on her body. She had defensive wounds on her arms, hands, and fingernails.

There was no blood underneath the woman’s body, but bloody drag marks led to a nearby curb. It appeared that the woman had been killed somewhere else and her body brought to the parking lot. A crime scene investigator took fingernail clippings from the woman and swabs from the bloody curb. She was designated “Jane Doe—Ventura County.”

Dr. Bruce Woodling examined Jane Doe—Ventura County’s body. He discovered an abrasion on her labia minora, which indicated forced penetration. There was a large amount of semen, sperm, and cervical fluid pooled in her vagina, indicating

that she had been raped while lying on her back and had not stood up afterward. Dr. Woodling believed she was raped just minutes before her death.

Dr. Peter Speth performed an autopsy.² Jane Doe–Ventura County had 16 stab wounds. Her lungs, liver, and mesocolon had been penetrated. Nearly all the blood had drained from her body. There was also evidence of strangulation.

Dr. Speth observed a pressure wound on Jane Doe–Ventura County’s labia, which was consistent with forced penetration. He collected clothing, fingernail clippings, a vial of blood, and various swabs. He agreed with Dr. Woodling that she had been raped shortly before her death and had not stood up afterward. He ruled her death a homicide.

In 2006, a criminalist analyzed the swabs taken from Jane Doe–Kern County’s body and clothing. Two years later, deputies from the Kern County Sheriff’s Office met with Chouest. The deputies showed him a photograph of Jane Doe–Kern County. Chouest said he did not know her, did not have sex with her, and did not kill her. He provided the deputies with a DNA sample. The sample matched the DNA found in Jane Doe–Kern County’s vaginal swabs.

In 2012, a forensic scientist analyzed items from Jane Doe–Ventura County’s rape kit. The DNA found on her clothing matched Chouest’s.

² Dr. Speth’s medical license was suspended from 1998 to 2006. Prior to his scheduled testimony, the trial court ruled that the evidence of suspension was admissible. After learning of the court’s ruling, Dr. Speth refused to testify. His videotaped preliminary hearing testimony was played for the jury.

The following year, investigators from the Ventura County District Attorney's Office met with Chouest. Chouest said he was unfamiliar with the area around Westlake High School. He said he had never seen Jane Doe–Ventura County and did not have sex with her. He provided the investigators with a DNA sample.

The investigators reinterviewed Chouest in 2015. Chouest admitted that he lived with C.B. in the summer of 1980 and that he left her sons alone one night. He denied having the boys vacuum blood out of his car or clean a knife. He also denied that he said that he “pick[ed] up some broad in a bar and took her out into the country and killed her.”

Prosecution case

Ventura County prosecutors charged Chouest with the murders of Jane Doe–Kern County and Jane Doe–Ventura County. Prior to trial, prosecutors sought to admit evidence of Chouest's prior sexual offenses against J.W., R.S., and R.H. pursuant to Evidence Code section 1108. Chouest objected that the evidence lacked probative value and was unduly prejudicial. He also argued its admission violated due process. The trial court overruled Chouest's objections and admitted the evidence.

J.W. testified that she was walking in Canoga Park in October 1977 when Chouest pulled his car alongside her and asked if she wanted a ride. J.W. accepted Chouest's offer and got into the car. After she closed the door, J.W. noticed that the door and window handles were missing. Chouest pulled out a knife and told J.W. he would stab her if she did not do what he said. He took his penis out of his pants and ordered J.W. to perform oral sex on him. J.W. said she would copulate Chouest if he threw the knife out the window. He pulled over, bound J.W.'s

hands with duct tape, and discarded the knife. He told J.W. he was going to rape her.

Chouest drove up a dirt road, removed the tape from J.W.'s hands, and forced her out of the car. He pushed her face into the dirt, kicked her head, and strangled her. J.W. lost consciousness. When she awoke, she was naked from the waist down. She felt semen flow from her vagina when she stood up. J.W. realized she had been raped.

Chouest pled guilty to kidnapping (§ 207) and assault with force likely to cause great bodily injury (§ 245, then-subd. (a)). A charge of rape of an unconscious person (§ 261, then-subd. (4)) was dismissed as part of his plea. The trial court sentenced him to four years in state prison. He was paroled in June 1980.

R.S. testified that in the summer of 1980 Chouest approached her with a knife in a parking lot at the College of the Sequoias in Visalia. He demanded her purse, but she refused to give it to him. He then demanded that she get into her car, but she again refused. R.S. handed Chouest her wallet, which contained all of her identifying information, and got into her car. Chouest fled on foot.

The next morning, Chouest called R.S. He said, "I got your money last night, didn't I?" R.S. said that he did. Chouest said, "Next time it will be your pussy." R.S. hung up the phone. The following day, Chouest drove by R.S.'s house when she was in the front yard.

R.H. testified that, a week after the incident with R.S., she was walking in a parking lot at the College of the Sequoias when Chouest ran up to her with a knife. He forced R.H. into her car, drove to a mall, and took her money. He then bound her hands behind her back, took off her pants and

underwear, and fondled her vagina. He pulled down her bra and cut the straps.

Chouest said there were too many people around, and drove to a more remote location. He forced R.H. to perform oral sex on him as he drove. After he parked, he pushed R.H. against the passenger door and penetrated her vagina with his penis. After about a minute, he said, “This isn’t working.” He was going to drive somewhere else instead.

R.H. panicked and told Chouest that her husband would be looking for her. Chouest cut the duct tape off her wrists and drove back to the college. He parked, got out of the car, and walked away. Police arrested him the following month.

Chouest pled guilty to the robbery of R.S. (§ 211), the rape of R.H. (§ 261, then-subd. (3)), and the kidnapping with intent to commit robbery of R.H. (§ 209, subd. (b)). He also admitted an allegation that he personally used a knife (§ 12022, then-subd. (b)) when he committed his crimes against R.H. The trial court sentenced him to 12 years to life in state prison.

Defense case

Chouest recalled the investigator from the Ventura County District Attorney’s Office. He testified that one of C.B.’s sons told him that he cleaned “a couple” of knives with bleach. Originally, C.B.’s son thought he cleaned a knife after he cut his hand during an incident with a neighbor, but he later remembered that that incident occurred after Chouest had him vacuum his car and clean his knife. C.B.’s son was also initially confused who told him that he “met some broad and dumped her body in Bakersfield,” but concluded it was Chouest.

Dr. Katherine Raven, a forensic pathologist, also testified for Chouest. She said the abrasion on Jane Doe—

Ventura County's labia could have been caused by rape; rough, consensual sex; or forceful rubbing. It could also have been a postmortem injury. Dr. Raven did not know what Dr. Speth referenced when he described the injury as a "pressure wound"; that is not an "acceptable medical term."

Jury instructions

At the conclusion of testimony, the trial court instructed the jury with CALCRIM No. 1191A, as follows:

The [prosecution] presented evidence that [Chouest] committed the crimes of assault by means of force likely to produce great bodily injury, kidnap, rape by use of threats, [and] kidnap with intent to commit robbery, and [made] alleged statements . . . to [R.S.] that were not charged in this case. These crimes are defined for you in those instructions.

You may consider this evidence only if the [prosecution has] proved by a preponderance of the evidence that [Chouest] in fact committed the uncharged offenses. Proof by a preponderance of the evidence is a different burden of proof from proof beyond a reasonable doubt. A fact is proved by a preponderance of the evidence if you conclude that it is more likely than not that the fact is true.

If the [prosecution has] not met [its] burden of proof, you must disregard this evidence entirely.

If you decide that [he] committed the uncharged offenses, you may, but are not required to, conclude from that evidence that [Chouest] was disposed or inclined to commit sexual offenses, and based on that decision, also conclude that [he] was likely to commit and did commit rape as charged here. If you conclude that [Chouest] committed the uncharged offenses, that conclusion is only one factor to consider along with all the other evidence. It is not sufficient by itself to prove that [he] is guilty of the special circumstances of rape. The [prosecution] must still prove the special circumstances beyond a reasonable doubt.

The court then instructed the jury on the elements of assault with force likely to produce great bodily injury (CALCRIM No. 875), rape (CALCRIM No. 1000), kidnapping with the intent to commit robbery (CALCRIM No. 1203), and kidnapping (CALCRIM No. 1215). It also instructed the jury on the union of act and intent (CALCRIM Nos. 252 & 705), various aspects and applications of proof beyond a reasonable doubt (CALCRIM Nos. 220, 224, 700, 1000), and the requirement to consider all of the court's instructions together (CALCRIM No. 200).

DISCUSSION

Ex post facto violation

Chouest contends the trial court's admission of his prior sexual offenses violated the constitutional prohibitions

against ex post facto laws.³ (U.S. Const., art. I, § 9, cl. 3; Cal. Const., art. I, § 9.) But Chouest did not object to the evidence on this ground at trial. He has forfeited his contention. (*People v. Huggins* (2006) 38 Cal.4th 175, 236 [ex post facto challenge to admission of victim-impact evidence forfeited where defendant did not object on that ground at trial]; *People v. Halsey* (1993) 12 Cal.App.4th 885, 888-889 [ex post facto challenge to admission of character evidence forfeited where defendant did not object on that ground at trial].)

In any event, the contention lacks merit. When Chouest murdered Jane Doe—Kern County and Jane Doe—Ventura County in 1980, California law prohibited the admission of evidence of a defendant’s prior crimes to prove their propensity to commit a charged crime. (*People v. Flores* (2009) 176 Cal.App.4th 1171, 1175 (*Flores*).) In 1995, the Legislature added section 1108 to the Evidence Code to “expand the admissibility of disposition or propensity in sex offense cases.” (*People v. Falsetta* (1999) 21 Cal.4th 903, 911 (*Falsetta*).) Two years later, the court in *People v. Fitch* (1997) 55 Cal.App.4th 172, 185-186 (*Fitch*), determined that Evidence Code section 1108 does not violate the constitutional prohibitions against ex post facto laws.

Chouest acknowledges that holding, but claims the U.S. Supreme Court’s decision in *Carmell v. Texas* (2000) 529 U.S. 513 (*Carmell*) calls *Fitch* into question. In *Carmell*, the Supreme Court considered whether a Texas statute allowing a defendant to be convicted of sexual offenses on the victim’s testimony alone—where such testimony previously required

³ The federal and state ex post facto clauses are interpreted the same. (*Tapia v. Superior Court* (1991) 53 Cal.3d 282, 295-297.)

corroboration—violated ex post facto prohibitions. (*Id.* at p. 529.) The *Carmell* court noted that ex post facto principles prohibit the application of laws that alter the rules of evidence and permit “less or different testimony than the law required at the time of the commission of the [offense] in order to convict the offender.” [Citation.]” (*Id.* at p. 525.) Because the Texas statute at issue eliminated the requirement that a victim’s testimony needs corroboration, less testimony was required to convict the offender. (*Id.* at p. 530.) The statute thus violated ex post facto principles. (*Id.* at p. 552.)

Carmell did not undermine *Fitch*. *Fitch* also noted that ex post facto principles prohibit the application of laws that permit less testimony to convict the offender, but determined that that principle “was not intended to prohibit the application of new evidentiary rules in trials for crimes committed before the changes. [Citations.]’ [Citation.]” (*Fitch, supra*, 55 Cal.App.4th at pp. 185-186.) The *Carmell* court reached the same conclusion: “The issue of the admissibility of evidence is simply different from the question [of] whether the properly admitted evidence is sufficient to convict the defendant. Evidence admissibility rules do not go to the general issue of guilt, nor to whether a conviction, as a matter of law, may be sustained.” (*Carmell, supra*, 529 U.S. at p. 546; see also *id.* at p. 533, fn. 23 [rules that expand the admissibility of evidence “do not at all subvert the presumption of innocence”].) Because Evidence Code section 1108 only regulates the admissibility of evidence, *Fitch* and *Carmell* are not inconsistent.

Post-*Carmell* decisions support our conclusion. California cases decided after *Carmell* have cited *Fitch* with approval. (See *People v. Davis* (2009) 46 Cal.4th 539, 603, fn. 6

[no ex post facto violation when Evidence Code section 1108 applied to charged offense that occurred before its enactment, citing *Fitch*]; *Flores, supra*, 176 Cal.App.4th at p. 1177, fn. 6 [*Fitch*'s conclusion that Evidence Code "section 1108 [does] not violate the constitutional prohibition of ex post facto laws remains sound"].) Other cases have rejected similar ex post facto challenges. (See *People v. Brown* (2004) 33 Cal.4th 382, 394-395 [victim-impact evidence]; *Flores*, at pp. 1180-1181 [evidence of prior acts of domestic violence].) And the Ninth Circuit, applying *Carmell*, has held that Evidence Code section 1108 does not violate ex post facto prohibitions. (*Schroeder v. Tilton* (9th Cir. 2007) 493 F.3d 1083, 1088.) These cases demonstrate that *Fitch* remains good law. Chouest's ex post facto challenge accordingly fails.

Erroneous jury instruction

Chouest next contends the trial court improperly instructed the jury that it could consider offenses not listed in Evidence Code section 1108—assault, kidnapping, and kidnapping with the intent to commit robbery—to help it determine whether he was predisposed to commit sexual offenses. The Attorney General argues that the doctrine of invited error applies. But in the context of erroneous jury instructions, the doctrine does not apply unless the record shows that "counsel had a tactical reason for requesting or acquiescing in the instruction." (*People v. Moon* (2005) 37 Cal.4th 1, 28.) The record here reveals no such tactical decision.

And, as the Attorney General concedes, the trial court's instructions were erroneous. Assault with force likely to cause great bodily injury, kidnapping, and kidnapping with the intent to commit robbery are not sexual offenses for purposes of

Evidence Code section 1108. (See Evid. Code, § 1108, subd. (d)(1)(A)-(F).) The court therefore erred when it included them in CALCRIM No. 1191A. (*People v. Jandres* (2014) 226 Cal.App.4th 340, 358.)

But the error was harmless. If a trial court erroneously instructs jurors on the use of Evidence Code section 1108 evidence, the error is harmless unless it is reasonably probable that the jury would have reached a result more favorable to the defendant absent the error. (*Falsetta, supra*, 21 Cal.4th at p. 925; see *People v. Watson* (1956) 46 Cal.2d 818, 836.) Here, there was no such reasonable probability.

The evidence showed that Chouest had a propensity to commit sexually violent crimes. He forced J.W. to orally copulate him, and then raped her in a remote location. He threatened to sexually molest R.S. He fondled R.H.'s vagina, exposed her breasts, and raped her. Dr. Comparini opined that Jane Doe—Kern County was similarly raped. Drs. Woodling and Speth came to the same conclusion about Jane Doe—Ventura County. Dr. Raven did not undermine these conclusions, but rather offered other possible explanations for the victims' injuries.

Additionally, Chouest used a knife to commit his crimes against J.W., R.S., and R.H.—the same type of weapon used to murder Jane Doe—Kern County and Jane Doe—Ventura County. And he had the opportunity to murder both women when he left C.B.'s sons alone around the same time the women were killed. When he returned, there was blood in the back of his car and on his knife. He boasted to one of C.B.'s sons that he had killed a woman and dumped her body near Bakersfield.

Most significantly, Chouest’s DNA was found in Jane Doe–Kern County’s vagina and rectum and on her clothes. It was also found in Jane Doe–Ventura County’s vagina and on her pants and underwear. Considering this overwhelming evidence of Chouest’s guilt, it is not reasonably probable that the jury would have reached a result more favorable to him absent the instructional error. (*People v. Walker* (2006) 139 Cal.App.4th 782, 808-810 [erroneous Evidence Code section 1108 instruction harmless where defendant’s semen found on victim’s body and evidence showed that he had raped and sexually assaulted other women].)

Burden of proof

Finally, Chouest contends CALCRIM No. 1191A diminished the prosecution’s burden of proof, in violation of his due process rights.⁴ We disagree with this contention.

We independently review whether the trial court accurately instructed the jury. (*People v. Posey* (2004) 32 Cal.4th 193, 218.) We review “the instructions as a whole in light of the entire record” (*People v. Lucas* (2014) 60 Cal.4th 153, 282,

⁴ We reject the Attorney General’s assertion that Chouest forfeited his contention because he did not object to CALCRIM No. 1191A at trial. (See *People v. Rundle* (2008) 43 Cal.4th 76, 151, disapproved on another ground by *People v. Doolin* (2009) 45 Cal.4th 390, 421, fn. 22.) Because an erroneous instruction on the use of evidence of Chouest’s prior sexual offenses may affect his substantial rights (see *People v. Harris* (1981) 28 Cal.3d 935, 956), we may review whether the instruction was erroneous (§ 1259). (See also *People v. Phea* (2018) 29 Cal.App.5th 583, 608 [determining whether CALCRIM No. 1191A affected a defendant’s substantial rights “‘necessarily requires an examination of the merits of the claim’”].)

disapproved on another ground by *People v. Romero and Self* (2015) 62 Cal.4th 1, 53, fn. 19), with the assumption that jurors are “capable of understanding and correlating” all of the instructions given (*People v. Mills* (1991) 1 Cal.App.4th 898, 918). We give the instructions a reasonable, rather than technical, meaning (*People v. Kainzrants* (1996) 45 Cal.App.4th 1068, 1074), and interpret them to support the judgment if at all possible (*People v. Laskiewicz* (1986) 176 Cal.App.3d 1254, 1258). Our duty is to determine “whether there is a reasonable likelihood that the jury misunderstood and misapplied the instruction.” (*People v. Mayfield* (1997) 14 Cal.4th 668, 777, abrogated on another ground by *People v. Scott* (2015) 61 Cal.4th 363, 390, fn. 2.)

CALCRIM No. 1191A told the jury that the prosecution had to prove Chouest’s prior sexual offenses by a preponderance of the evidence. It also stated that, if the prosecution carried that burden, jurors could, “but [were] not required to, conclude from that evidence that [Chouest] was disposed or inclined to commit sexual offenses, and based on that decision, also conclude that [he] was likely to commit and did commit [the] rape[s] as charged.” Chouest argues that allowing the jury to determine that he “did commit [the] rape[s] as charged” based only on prior sexual offenses that were proved by a preponderance of the evidence diminished the beyond-a-reasonable-doubt standard of proof.

Our Supreme Court rejected a substantively identical contention when it considered a challenge to CALJIC No. 2.50.01, the precursor to CALCRIM No. 1191A. (See *People v. Reliford* (2003) 29 Cal.4th 1007 (*Reliford*).) In *Reliford*, the defendant was charged with rape and sexual penetration by a foreign object.

(*Id.* at p. 1011.) At trial, the prosecution introduced evidence of the defendant's prior conviction for assault with the intent to commit rape. (*Ibid.*) The trial court instructed the jury: "If you find that the defendant committed [assault with the intent to commit rape] . . . you may, but are not required to, infer that the defendant had a disposition to commit the same or similar type sexual offenses. If you find that the defendant had this disposition, you may, but are not required to, infer that he was likely to commit and did commit [rape and sexual penetration by a foreign object]. [¶] However, . . . that the defendant committed a prior sexual offense . . . is not sufficient by itself to prove beyond a reasonable doubt that he committed the charged crime[s]." (*Id.* at p. 1012.)

On appeal, the defendant contended that, "having found the uncharged sex offense true by a preponderance of the evidence, jurors would rely on 'this alone' to convict him of the charged offenses." (*Reliford, supra*, 29 Cal.4th at p. 1013.) The Supreme Court concluded otherwise. CALJIC 2.50.01 informed jurors that the defendant's prior conviction was "not sufficient by itself to prove beyond a reasonable doubt that he committed the charged crime." (*Ibid.*) The instruction, read as a whole, thus "could not have been interpreted to authorize a guilty verdict based solely on proof of uncharged conduct." (*Ibid.*) Additionally, the trial court instructed the jury that the charged crimes required proof of the union of act and intent—a requirement that could not be satisfied "solely by proof of uncharged offense." (*Id.* at pp. 1013-1014.) And from the instructions on reasonable doubt, jurors would not believe they could use the preponderance-of-the-evidence standard for "anything other than the preliminary determination [that the] defendant committed a

prior sexual offense.” (*Id.* at p. 1016.) It was thus not “reasonably likely a jury could interpret the instructions to authorize conviction of the charged offenses based on a lowered standard of proof.” (*Ibid.*)

The same is true here. In addition to the portion of CALCRIM No. 1191A Chouest quotes, the instruction told jurors that proof that he committed the uncharged offenses was “not sufficient by itself to prove that [he was] guilty of the special circumstance[s] of rape. The [prosecution still had to] prove the special circumstances beyond a reasonable doubt.” The trial court also told jurors about the union of act and intent required for a true finding on the special circumstances. (See CALCRIM Nos. 252 & 705.) And it instructed the jury multiple times on the prosecution’s duty to prove each element of the special circumstances beyond a reasonable doubt. (See, e.g., CALCRIM Nos. 220, 224, 700, 1000; see also CALCRIM No. 200 [jury must consider all instructions together].) Considered in light of the whole record, there is no reasonable likelihood that the jury interpreted CALCRIM No. 1191A to require only that the prosecution prove the special circumstances by a preponderance of the evidence. We join our colleagues who have reached the same conclusion. (*People v. Anderson* (2012) 208 Cal.App.4th 851, 892-896; *People v. Crompt* (2007) 153 Cal.App.4th 476, 479-480; *People v. Schnabel* (2007) 150 Cal.App.4th 83, 86-87.)

People v. James (2000) 81 Cal.App.4th 1343 is distinguishable. In *James*, the trial court instructed the jury with the 1997 version of CALJIC No. 2.50.02. (*Id.* at pp. 1349-1350.) That version did not tell jurors that “propensity [evidence] alone [could not] support a conclusive inference that the defendant committed the charged offense.” (*Id.* at p. 1354.) The

James court thus urged a clarification to the instruction: “[I]f you find the defendant committed any or all of the uncharged offenses, that is not sufficient, by itself, to prove he committed the charged crime. You may not find the defendant guilty unless you are satisfied that each element of the charged crime has been proven beyond a reasonable doubt.” (*Id.* at p. 1357, fn. 8.)

CALCRIM No. 1191A, as given here, includes that clarification.

DISPOSITION

The judgment is affirmed.

NOT TO BE PUBLISHED.

TANGEMAN, J.

We concur:

GILBERT, P. J.

PERREN, J.

Ryan J. Wright, Judge

Superior Court County of Ventura

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